

TERMS AND CONDITIONS 2020

1. DEFINITIONS

In these terms and conditions (**Terms**) unless the Company otherwise specifies:

"BGC Insulation" or **"Company"** means BGC (Australia) Pty Ltd (ACN 005 736 005) T/A BGC Insulation.

"Consequential Loss" means loss beyond the normal measure of direct damages and includes without limitation and whether or not such loss would be within the normal measure of direct damages, indirect loss, loss of profit, loss of revenue, loss of business, loss of actual or anticipated savings, loss of bargain, loss of business reputation, loss of use, cost of capital or costs of substitute goods, facilities or services and loss of opportunity (including opportunities to enter into arrangements with third parties).

"Company-Supplied Information" means any information (whether written or otherwise) supplied or made available to the Purchaser:

- (a) by or on behalf of the Company; or
- (b) before or after the date of these Terms in connection with the Services, the Site or anything in connection with these Terms.

"Credit Agreement" means an agreement with BGC (Australia) Pty Ltd for the provision of credit to the Purchaser.

"Insolvency Event" means the happening of any of these events in relation to the Defaulting Party:

- (a) the Defaulting Party enters into a compromise or arrangement (or announces one) under section 411 if the Corporations Act 2001 (Cth);
- (b) a managing controller is appointed over the whole (or substantially the whole) of the Defaulting Party's property; or
- (c) the Defaulting Party enters into voluntary administration.

"Insulation Products" means insulation products and any associated goods supplied by the Company in accordance with these Terms

"Order" means an order to supply Insulation Products, whether made by the Purchaser accepting a Quote, or by the Company accepting a purchase order or similar document provided by the Purchaser to the Company.

"Price" means the price specified in any Quote or tax invoice supplied by the Company.

"Purchaser" means the person, firm, company or organisation to whom a Quote is submitted.

"Quote" means a quote (or similar document) provided by the Company to the Purchaser.

"Services" means the:

- (a) delivery of Insulation Products and accessories to the Site; and
- (b) if specified in the Quote, installation of Insulation Products on any building on the Site,

in accordance with these Terms.

"Site" means the site to which the Insulation Products are to be delivered and installed.

"Terms" means the agreement between the parties comprising the Quote and these terms and conditions.

"Warranty" means BGC Insulation's warranty available as a downloadable document from the BGC Insulation website: www.bgc.com.au/. Alternatively please contact the office for a mailed copy on (08) 9334 4990.

2. APPLICABILITY OF TERMS

2.1 A Quote shall not constitute an offer to supply the Insulation Products or perform the Services, and no contract for the supply of goods and/or services shall exist between the Company and the Purchaser until the Purchaser's Order has been accepted by the Company (either by communication to the Purchaser or an overt act of acceptance such as accepting the Purchaser's cash payment).

2.2 The Company reserves the right to accept or decline, in whole

or in part, any Order placed by the Purchaser.

2.3 These Terms will apply to all Quotes (including any Orders made by the Purchaser and accepted by the Company). The Purchaser's terms and conditions, howsoever provided, do not form part of these Terms (even if any representative of the Company signs those terms and conditions and/or they are annexed to the Terms or any Quote or Order). Any variation or changes to these Terms (other than an update to these Terms by the Company), whether to apply to all subsequent Orders, or any particular Order, may only be made if it:

- (a) is in writing;
- (b) is signed by authorised managers of both parties; and
- (c) expressly states that it is a variation to these Terms, and the parties agree and acknowledge that their representatives and employees that are not authorised managers as referred to in this clause 2 do not have the authority to vary these Terms, or to agree that these Terms do not apply to a supply to which these Terms would otherwise apply.

2.4 If the Purchaser places an Order with the Company after receiving these Terms, the Purchaser shall be deemed to have read and unconditionally agreed to these Terms.

Where the Purchaser has entered into a Credit Agreement, the terms of the Credit Agreement shall prevail over these Terms to the extent of any inconsistency.

3. INSULATION PRE-CONDITIONS

Mandatory Preparation:

3.1 Before Services are commenced, the Purchaser must comply with BGC Insulation's preparation requirements, including but not limited to the following at the Purchaser's cost:

- (a) Access To Site – The Site must be cleared to allow adequate space for the positioning of Insulation Products to the front elevation of the building. In the case of internal loading, BGC Insulation requires clear access from the building entrance to the "ceiling manhole". For two storey work, BGC Insulation must have access to the first storey manhole with access via permanently installed stairs in place.
- (b) Scaffolding – No provision has been made in any Quote or Order to supply or erect any scaffolding on the Site. If any relevant authority requires scaffolding to be erected on the Site, this must be provided and installed by the Purchaser or its builder ("**Builder**") in accordance with all relevant standards, codes and laws.
- (c) Safety – the Purchaser must ensure that the Site is structurally safe and sound and that it is safe for BGC Insulation to undertake the installation works, including without limitation, ensuring that there are no hazardous materials on the Site that may affect those works.
- (d) Electrical and Lighting – all electrical and lighting work must be installed and completed by the Purchaser or its Builder in accordance with all relevant standards, codes and laws.
- (e) Ceilings – all ceilings and associated products must be installed and completed by the Purchaser or its Builder in accordance with all relevant standards, codes and laws.
- (f) Air-conditioning – all air-conditioning and associated products must be installed and completed by the Purchaser or its Builder in accordance with all relevant standards, codes and laws.
- (g) Other Trades – other internal trades (i.e. wall plasterers, painters, wall and floor tilers, cabinet installers etc.) should not be carrying out relevant works when programming the supply and installation of Insulation Products.

3.2 If any preparation work undertaken by the Purchaser is defective, the Company is not liable for any failure of the Insulation Products to perform as a result of or arising from such defects. The Purchaser indemnifies the Company from any loss or damage arising from any breach of this clause.

4. QUOTES

4.1 In this clause, any reference to a "surcharge" shall mean the surcharge notified to the Purchaser from time to time.

4.2 The Price:

- (a) is based on approximate measurements, quantities, relevant conditions and other information relating to the design of the building or the installation of the Insulation Products provided to the Company by the Purchaser or their Builder ("**Specifications**"); and
- (b) will remain valid for a period of 30 days for an Order made by the Purchaser in accordance with the Quote, unless otherwise specified. Any extension of this period is at the discretion of the Company.

4.3 If the Purchaser or their Builder provides the Company with Specifications, the Company has relied upon those Specifications in making any recommendation. If any Specifications provided are incorrect or incomplete, the Company is not liable for any failure of the Insulation Products to perform arising from incorrect selection of Insulation Products or incorrect method of installation.

4.4 If the Purchaser has any doubts as to the accuracy or completeness of the Specifications provided to the Company, the Purchaser must ensure that the Company is provided with full, correct information (and the opportunity to revise any recommendations) prior to accepting any Quote.

4.5 The Purchaser must pay the agreed price, or where no price is agreed, the reasonable costs of all variations to any Orders in addition to the Price quoted where variations are received or required after the Order has been processed and the Company incurs costs as a result. The reasonable costs of a variation will be calculated by the Company at reasonable rates for labour and materials and will include a reasonable administration charge, allowance for overheads and profit and other costs incurred by the Company as a result of the variation. The Company will take reasonable steps to limit these costs once informed of the variation. Any difference in the measurements, quantities or conditions from those advised by the Purchaser shall constitute a variation.

5. COMPANY SUPPLIED INFORMATION

5.1 Unless otherwise expressly provided for in these Terms, the parties agree that Company-Supplied Information:

- (a) has been, or will be, provided only for the Purchaser's convenience; and
- (b) has not been, and will not be, relied upon by the Purchaser for any purpose (including entering into these Terms).

5.2 The Company does not:

- (a) assume any responsibility or duty of care in respect of; or
- (b) warrant, guarantee or make any representation as to, Company-Supplied Information (including as to its accuracy, completeness or adequacy for the purposes of these Terms nor that all such information held by the Company has been provided to the Purchaser by way of Company-Supplied Information or otherwise).

6. THE COMPANY'S OBLIGATIONS

6.1 The Company:

- (a) will perform the Services in accordance with the Specifications and industry standards, and in a proper and workman-like manner; and
- (b) may, subcontract its obligation to install in its absolute discretion. The Company will be responsible for its obligations under these Terms notwithstanding that subcontracting.

7. PURCHASERS OBLIGATIONS

7.1 The Purchaser agrees to do the following at the Purchaser's cost:

- (a) comply with the Company's reasonable directions as to the works;
- (b) carry out all preparatory work required, including without limitation, that set out in clause 3;
- (c) ensure that the Site is safe and complies with the Company's Site Safety Manual (available on the Company's website) and the *Occupational Safety and Health Act 1984 (WA)* and *Occupational Safety and Health Regulations 1996 (WA)*, including any other relevant safety legislation, regulations,

rules or by-laws;

- (d) prior to the commencement of the Services, ensure all Site preparation work is completed in accordance with all relevant legislation;
- (e) provide adequate vehicular access to the Site.
- (f) provide a crossing in accordance with any applicable legislation;
- (g) provide a source of power, and hoists, cranes, scaffolding and staging and such other equipment as is reasonably required by the Company in order to perform the Services. The Purchaser shall ensure that all such equipment is in good working order and condition and complies with all legislation applicable to such equipment; and
- (h) clean the Site on completion of the works by the Company.

7.2 The Purchase indemnifies the Company for any loss or damage or third party claims arising from any breach of this clause by the Purchaser.

8. DELIVERY OR COLLECTION

8.1 Delivery

If specified in the Quote, delivery shall be made to the Site by carriers engaged by the Company. The Purchaser shall ensure the delivery vehicle has a safe, suitable and unrestricted route. Where access to the Site is limited, the Company may deposit the Insulation Products to the front elevation to the Site or internally in the building if accessible.

The Purchaser shall release and indemnify the Company against any loss, damage, cost (including recharges) or liability arising from events occurring while gaining or caused by such access unless solely caused by the Company's negligent act or omission. The Purchaser acknowledges that all times quoted for delivery or collection are estimates only, and the Company will not be liable for any failure to deliver or for delay in delivery or collection of Insulation Products occasioned by strike, lockout or other industrial dispute, shortage of stock, shortage of labour, lack of skilled labour, delays in transit, fire, flood, hostility, civil commotion or any other cause whatsoever whether or not beyond the control of the Company.

The Purchaser shall not be relieved of any obligation to accept or pay for the Insulation Products or the Services by reason of any delay in delivery.

8.2 Collection

Insulation Products may be collected by the Purchaser's carriers if specified in the Quote in which case the Purchaser must arrange for the return of the Company's stillages within 7 days of collection to the Site. The Purchaser shall indemnify the Company for any damages, costs (including, without limitation, legal fees on a solicitor-client basis), losses or expenses, incurred by the Company as a result of a breach of this clause.

The Purchaser will ensure that the Purchaser's motor vehicle used to collect and transport the Insulation Products is maintained in a mechanically sound condition that is fit for the purpose of collecting and transporting the Insulation Products.

The Company may refuse to release the Insulation Products to the Purchaser where the Company has reasonable grounds to believe that the Purchaser's motor vehicle is not fit for the purpose of collecting and transporting the Insulation Products.

The Purchaser will comply with all relevant laws, including without limitation, all safety laws applicable to the supply of Insulation Products and Chain of Responsibility obligations with respect to the collection and transportation of the Insulation Products.

In this clause, "**Chain of Responsibility**" means the road transport laws contained in the *Road Traffic (Administration) Act 2008 (WA)* and the *Road Traffic (Vehicles) Act 2012 (WA)* and associated regulations, as amended from time to time, or any equivalent laws in other States.

9. PAYMENT

9.1 Terms of payment are cash before delivery or collection unless the Purchaser has entered into a Credit Agreement with the Company, in which case the terms of that Credit Agreement will apply.

9.2 The Purchaser agrees to pay the amount(s) specified in any Quote accepted by the Purchaser before delivery/collection, or in any tax invoice issued to the Purchaser (for approved accounts

only) without set-off or counterclaim.

9.3 For any Insulation Products ordered for delivery and later cancelled the Purchaser shall, on demand, pay to BGC Insulation all reasonable expenses incurred up to the time of cancellation. BGC Insulation's statement of expenses shall be prima facie evidence of its contents.

10. RISK

10.1 The Insulation Products are at the Purchaser's risk from the time the Insulation Products are delivered to the Site. However, if delivery is made by the Purchaser's carrier, the Insulation Products will be at the risk of the Purchaser immediately upon collection of the Insulation Products by the Purchaser's carrier from the Company. The Purchaser must insure the Insulation Products for their full replacement value from the time that risk passes to the Purchaser until at least the time title in the Insulation Products passes to the Purchaser.

11. TITLE

The Company remains owner of the Insulation Products until the Purchaser has paid for the Insulation Products in full.

Nothing in the Quote gives the Purchaser any lease or right to use the Company's plant and equipment ("**Equipment**") used to provide the Services under these Terms. Title in the Equipment remains with the Company at all times.

12. GST

Any expression used in this clause 12 and which is defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* has the same meaning in this clause 12.

Unless otherwise expressly stated, all amounts stated to be payable by the Purchaser under these Terms are exclusive of GST. If GST is imposed on any supply made under or in accordance with these Terms, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this document, subject to the provision of a tax invoice by the supplier to the recipient.

13. TERMINATION

13.1 A party ("**Non-defaulting Party**") may terminate these Terms at any time by written notice to the other party ("**Defaulting Party**") if any of the following apply:

- (a) the Defaulting Party fails to carry out any provision of these Terms, the failure is capable of remedy and the Defaulting Party does not remedy that failure within 7 days after written notice to the Defaulting Party requiring it to be remedied; or
- (b) a judgment, order or encumbrance is enforced, or becomes enforceable upon any of the Defaulting Party's property;
- (c) an order for payment is made or judgment for an amount exceeding \$10,000 is entered or signed against the Defaulting Party which is not satisfied within 7 days;
- (d) the Defaulting Party suspends or delays payment of its debts;
- (e) the Defaulting Party is unable to pay its debts as and when they fall due or goes into bankruptcy;
- (f) the Defaulting Party (being a corporation) has a liquidator appointed to it, or has a mortgagee of the corporation assume control of, or a receiver appointed to any of the assets or undertakings of the Defaulting Party (not being an Insolvency Event);
- (g) the Defaulting Party (being a corporation) is deregistered;
- (h) the Defaulting Party breaches a Credit Agreement; or
- (i) to the extent permitted by law, the Defaulting Party is subject to an Insolvency Event.

13.2 These Terms may be terminated by the Company at any time effective immediately upon the giving of notice if a change occurs in the Purchaser's circumstances which, in the Company's reasonable opinion, may have a material adverse effect on the Purchaser's ability to comply with its obligations under these Terms. Examples include (but are not limited to):

- (a) a change in the Purchaser's financial position up and until an Insolvency Event occurring;
- (b) the Purchaser factoring its debts; or
- (c) the Purchaser becoming party to litigation, arbitration or any other administrative proceeding.

13.3 If the Purchaser is the Defaulting Party under these Terms (or where any of the events in clause 13.2 occurs) the Company may, at its option, exercise any or all of the following rights in addition to any other rights it may have under these Terms or at law:

- (a) suspend performance of the Services whether under these Terms or otherwise; and/or
- (b) withdraw any credit facilities which may have been extended to the Purchaser and require immediate payment of all moneys owed to the Company by the Purchaser.

13.4 The Defaulting Party (or in the case of an event under clause 13.2, the Purchaser) will be responsible for, and will indemnify the Non-Defaulting Party (or the Company, as applicable) against, any damages, costs (including, without limitation, legal fees on a solicitor-client basis), losses and expenses, incurred by the Non-Defaulting Party (or the Company, as applicable) as a result of the breach or event.

13.5 On termination of these Terms under this clause 13, each party retains its rights against the other party in respect of any past breach, in addition to any other rights, powers or remedies provided by law.

14. LIABILITY

In the event any Insulation Products supplied by the Company under these Terms are defective, the Company's liability (if any) shall be limited to:

- (a) the Warranty; and
- (b) the Purchaser's rights under the Australian Consumer Law.

To the extent permitted by law, the Company's liability under any condition or warranty which cannot legally be excluded is limited to:

In the case of Insulation Products

- (a) the replacement of the Insulation Products;
- (b) the repair of the Insulation Products (if applicable);
- (c) the payment of the cost of replacing the Insulation Products; or
- (d) the payment of the cost of having the Insulation Products repaired (if applicable).

In the case of Services

- (a) supplying the Services again; or
 - (b) paying the cost of having the Services supplied again.
- If the Company damages the Site or any buildings or materials on the Site then:

- (a) the Company is not liable unless the Purchaser notifies the Company of the failure within 10 days after the date such damage occurs; and
- (b) the liability of the Company is in any case limited as set out above.

Where the Purchaser acquires Insulation Products from the Company for the purpose of on-supplying to another person ("**consumer**"), the Company shall not be liable for any consequential loss suffered by the Purchaser unless otherwise stated in a contract or agreement. However, to the extent required by the Australian Consumer Law, the Company may be liable for any consequential loss suffered by the consumer.

Where the Purchase makes any claim under the Warranty or otherwise, the Purchase agrees to give the Company reasonable access to the Site to investigate their claim.

The provisions of this clause 14 are subject to the provisions of any statutory condition or warranty which cannot legally be excluded.

15. DISPUTE RESOLUTION

If a dispute or difference arises between the Company and the Purchaser in respect of any fact, act, matter or thing arising out of or in any way connected with these Terms and one party requires the dispute or difference to be resolved, then that party will promptly give the other party a written notice giving details of the dispute.

Within 14 days of a party receiving a notice, the parties, and/or their delegates, must meet and attempt to resolve the dispute in good faith.

If, within 14 days of the meeting, the dispute is still not resolved, then, either party may proceed to litigation.

In the event of any dispute between the parties, the Purchaser shall pay all undisputed amounts to the Company.

16. FORCE MAJEURE

- (a) A party ("**Affected Party**") is not liable for any delay or failure to perform an obligation (other than to pay money) under [the Contract/this Agreement/this agreement] caused by an act of God, fire, war, insurrection or other armed conflict, riot, vandalism or sabotage, strike, lockout, ban, transport or port accident or congestion, pandemic, epidemic, quarantine of persons or goods, limitation of work or other industrial disturbance or any law, rule, regulation, order, requirement or restraint imposed by any government or governmental agency whether local, state, national or international (other than an order, requirement or restraint resulting from the Affected Party's breach of any law, permit or authorisation).
- (b) The Affected Party must notify each other party as soon as practical of any anticipated delay or failure caused by an event specified in clause 16(a) ("**Event**").
- (c) The performance of the Affected Party's obligation is suspended for the period of delay caused by the Event to the extent performance is prevented by the Event from the date notice is given under clause 16(b) and any such non-performance or delay in performance of this agreement will not be a breach of this agreement.
- (d) Any party may terminate this agreement at the expiration of not less than 7 days' notice to the other party if prevention of performance of a material obligation by an Event, or a delay caused by the Event, exceeds 90 days.

If a party terminates this agreement under clause 16(d), all money previously paid under this agreement for which no goods, services or other consideration has been provided must be refunded.

17. PRIVACY

The Company collects the Purchaser's personal information

for the purpose of providing the Insulation Products and keeping a record of transactions on the Company's file. Personal information can include sensitive health information as required by the Company from time to time. The Company's Privacy Policy can be found at <http://www.bgc.com.au/>

18. SURVEILLANCE

The Purchaser agrees that the Company may use a tracking device or other surveillance device at the Company's premises or manufacturing sites and in its vehicles.

19. GENERAL

19.1 These Terms are governed by and are to be construed according to the laws of Western Australia and the parties submit to the exclusive jurisdiction of the courts of Western Australia.

19.2 If any part of these Terms is, or becomes, void or unenforceable, that part is, or will be, severed from these Terms so that all parts that are not, or do not become, void or unenforceable remain in full force and effect and are unaffected by that severance.

19.3 A failure to exercise or delay in exercising any right, power or privilege by any party will not operate as a waiver of that right, power or privilege. A single or partial exercise of any right, power or privilege will not preclude any other or further exercise of that right, power or privilege, or the exercise of any right, power or privilege. A purported modification, variation or amendment of these Terms or any waiver of any rights of any party shall not have any force or effect unless and until the same is in writing, executed by the parties or, in the case of a waiver, is executed by the party whose rights are thereby waived.

19.4 These Terms constitute the entire agreement between the parties with respect to the subject matter of these Terms and contains all of the representations, warranties, covenants and agreements of the parties in relation to the subject matter of these Terms as at the date of these Terms. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by these Terms and has no further effect.